

AN ASSESSMENT OF REFORM OPPORTUNITIES FACING THE 14TH CONVOCATION OF THE UKRAINIAN SUPREME COUNCIL (*VERKHOVNA RADA*)

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Executive Summary

Overall Legislative Assessment. After five years and \$7 million of parliamentary support programs, USAID/Kiev requested a technical review team from USAID/Washington to conduct an assessment of the institutional capabilities within the Ukrainian Parliament.¹ In its assessment, the Team found many individuals and committees within the Rada to be both energetic and sophisticated in their approaches to the task of legislative drafting and enactment, despite the **prevailing view** that a "reformist" president is simply battling an "unreformist" legislature. Many interviewees candidly acknowledged, however, that the Rada's failure to enact profound structural reforms (such as those relating to rules, the conduct of hearings, strengthening the committee system, obtaining greater access to legislative information) has prevented the Rada from becoming a more respected, **effective, transparent,** authoritative and coherent branch of government. Of all difficulties mentioned, the sheer lack of experience with organizing an increasingly complex legislative agenda has become the central issue before the Legislature, irrespective of actions of the other branches of power. Because of this, the Rada drafts only about 20% of the legislation it actually ratifies; the bulk of the rest comes from the Cabinet of Ministers---an entity over which Parliament exercises little influence.²

Why Assistance to the Rada Should Continue. (a) All persons interviewed for this assessment, whether from the presidential administration, advisers to the Cabinet of Ministers, the Secretariat of the Rada itself, individual committee chairmen and deputies, U.S. and

¹The assessment was carried out by four analysts between February 15 and March 6, 1998: Corbin Lyday, ENI/DGSR, Senior Policy Analyst (Team Leader); Illona Countryman, ENI/DGSR, Democracy Specialist; Robert Herman, ENI/PCS, Senior Policy Analyst, and Pat Isman, G/DG, Program Analyst. The Team wishes to express its gratitude to Yaropolk Kulchycky and Maria Dotsenko, USAID/Kiev, for organizing the meetings for this analysis.

²This does not include presidential *postanovki* (decrees), which do not require legislative approval. (The use of decrees to circumvent legislative ratification altogether represents a significant weakness in Ukraine's new political order, but one that can be amended only by constitutional ratification, which there is little political support for.)

Ukrainian NGOs, and members of the press, underscored the progress already made from the 12th to the 13th Convocations. Many directly cited USAID's technical assistance programs as one of the primary reasons for this. Others emphasized the continued relevance and importance of USG assistance, even when compared with that of other European donors (who have much smaller assistance programs). *Given enormous new statutory and legislative tasks facing Parliament, particularly in the area of **economic restructuring** local self-government and defining new structures of state power, the USG and other donors should continue to play an integral role in legislative development, albeit with certain changed parameters, as described further.*

(b) While many observers expect the current communist/**socialist/peasant** partnership to continue, even strengthen, in the new Rada, those familiar with the privatization process emphasized to the Team that this bloc is not inherently hostile to all concepts of economic reform. Indeed, the communists already accept the notion of land ownership in property transfers. Logically, with increased levels of Parliamentary expertise and professionalism, the opposition of this bloc to larger concepts of privatization and market reform might well diminish. *Donor assistance, properly focused, would increase chances for co-operation, rather than confrontation;*

(c) A majority of those interviewed expressed cautious optimism that the new 50/50 single-member/party list changes mandated by the new Election Law (and recently upheld by the Constitutional Court), might alone compel Parliament to pursue certain internal structural reforms it has so far failed to enact. Others warned that the new changes would create a "Russian system" where Parliament's effectiveness would continue to be overshadowed by a much more powerful Presidency, and might actually harden the new leadership even further. In either case, however, all observers affirmed that the statutory and legislative burden on Parliament would continue to increase. The Rada might well be more amenable to structural reform simply to accommodate its growing legislative burden;

Immediate Recommendations. The new convocation in May 1998 seems an appropriate time for donors to examine technical assistance programs in light of possible new structural changes. The stakes involved are quite high: *without more focused technical assistance of the type given generally only to the Cabinet of Ministers, legislative professionalism will remain low, and popular dissatisfaction with Parliament can be expected to grow.* Presidential frustration might well culminate with the Rada's dismissal and rule of the country solely by executive decree--a move which would undermine virtually all progress made toward democratization since the 1996 constitutional ratification. To help prevent this, the Team believes that a combination of "carrots" and "sticks" with regard to the Rada might help alleviate this situation:

- * The Team suggests that Mission Director Greg Huger continue to work closely with the World Bank liaison to institute the new member training symposiums and follow up on the success achieved at first event held on June 19-20, 1998. Such an effort would be complemented by bringing a Congressional expert from Washington to act as a resource guide with regard to the Rada's analytical abilities, and help foster good relations between the Donor Committee and the Secretariat. It is recommended that at least part of this training focus include officials from the Cabinet of Ministers, as well as selected technical committee staff;

Longer-Term Suggestions. The Team believes assistance to the VR should continue, but within narrower parameters, some of which are laid out below.

- * The Team recommends that USAID strongly encourage and pursue the development of a series of Ukrainian NGO analysis and policy centers *outside the Rada* for its utilization

and that the work of those centers be closely connected to current Office of Economic Restructuring (OER) efforts to foster an analysis group within the Budget Committee to promote greater fiscal expertise;

- * The mission should encourage dissemination of translated US and European legislative materials. All deputies and staff interviewed expressed tremendous appreciation for such materials. Current topics of need include the tax administration system (particularly VAT and excise taxes), land reform and municipal privatization (under the category of self-government), energy conservation, congressional investigation, legislation pertaining to the formation of a national security council, and consumer rights legislation. The Mission might also consider dissemination of the approximately 300 pieces of legislation that the Rada passes every year to the oblasts, municipalities and territories throughout Ukraine;
- * The Team endorses efforts at strengthening personnel needs at the Rada and investing in the next generation of Ukrainian economic and political leaders. However, such programs need to be closely monitored to assure reasonable fairness in the intern selection process, and possibly develop a 'work-for-hire' situation to assure that interns trained will remain in the Rada to help foster the notion of public service;
- * The team recommends that more focused staff training be continued, but should be closely coordinated with efforts of other donors, such as the British Know-How Fund, the Dutch 'Good Governance' Program and the Canadian Legislative Development Program. *As one example, the newly-created Ombudsman Office would benefit from western technical experience if it is to act as overseer of law enforcement bodies and enforcer of human rights legislation;*
- * The Team does not endorse proposals for municipal Rada training, feeling that other, needs need to be addressed at the municipal level before such training can occur. Other more relevant programs can be enacted in order to ensure the success of municipal taxation and privatization programs. Such "bottom-up" pilot programs might then be introduced later by Rada Committees after, not before, they have been implemented in at least some localities;

Improving Executive-Legislative Relations. While the Team supports selected efforts by USAID/OER to assist the Budget Committee and Sub-Committee on Taxation by forming a fiscal analysis group within the Rada, it believes that such efforts need to become more integrated with the overall goals of structural reform for the Rada. *While Parliament's need for economic expertise should not be ignored, its overall failure to become more accountable to the Ukrainian electorate and the changing needs of its own membership constitute even greater threats to the democratic process.* As donor attention focuses on structural reforms within the Cabinet of Ministers and executive branch, it must also increasingly include the Rada in a more systematic fashion. This can only help reduce the Rada's sense of isolation and information dependency on the executive. The Team recommended to the World Bank the inclusion of key Rada figures in its \$200 million PARL loan to improve the process of inter-branch public administration. OER's work with the Budget Committee should logically be partnered with PDP's efforts to create stronger analytical centers outside the Rada as well.

Legislative Development in Ukraine: A Political Background

Achievements and Failures. Six years of independence from the former Soviet Union have bestowed certain real political and social benefits on Ukraine. A national identity and language, submerged for 70 years, is gradually being restored, a constitutional pact setting out the parameters of political evolution was arrived at without bloodshed, and the country's nuclear weapons have all been removed from its territory without incident. Two successive contested presidential elections have strengthened political legitimacy, and additionally removed early fears of clashes between the new Ukrainian and Russian states. Yet such successes have included large, systemic failures: a continued unwillingness to undertake fundamental economic restructuring, which, in turn, only encourages the "mafiazation" of the Ukrainian economy without ameliorating advantages of increased foreign and domestic investment. And despite regular elections, Ukrainian citizens, like those of other Soviet republics, are highly disillusioned with the corruption and "crony capitalism" that has become the new norm in Ukrainian economic and political life. Most politics has become so inscrutable and complicated that most citizens, even if they strongly wish to follow it, are not able to do so. Judicial independence and integrity remain rudimentary, despite the presence of a new Constitutional Court, and most citizens have little confidence in the rule of law.

Origins of Legislative Weakness. The weakness of legislative power is a part of this larger phenomenon. It was not an accidental phenomenon connected with the transition, however, but part of the 70-year Soviet institutional legacy. Lenin forcefully dissolved the only pre-revolutionary legislative body ever democratically elected in the Russian Empire---the Constituent Assembly---after one day's deliberations in January 1918, and his Party created inert, rubber-stamp assemblies of "soviets" whose sole purpose was to provide legitimacy to the Communist Party and its administrative apparatus, the Cabinet of Ministers. (The Ukrainian Rada, like the former Russian Supreme Soviet, is the descendant of the this body, left largely structurally intact after 1991.) Against that historical backdrop, the First Congress of People's Deputies in the USSR was convened in 1989, made even more dramatic against a backdrop of social, environmental ethnic discontent throughout the former Soviet Union. However, a new day for legislative power was already severely constrained by the creation of a new structure: the Soviet Presidency, duplicated in rapid succession by Russia, Ukraine and other republics. Whatever its original intent, the new presidencies rapidly co-opted many of the functions once given to the old Cabinet of Ministers, while the Supreme Soviet, filled largely with deputies who had not earlier abandoned the Communist Party, crystallized popular distinctions between executive and legislative power as two competing centers of "reform" and "anti-reform." (Such a characterization would apply both to the Ukrainian and Russian soviets as well after December 1991.)

Constitutional Compromises. The destruction of the Russian Supreme Soviet in October 1993 had a strong effect in both countries by helping to produce constitutional compromises that reified strong executives, weaker parliaments and a "second executive" in the form of a "new" Cabinet of Ministers. While a new political order has been established in the face of potential chaos, genuine decentralization and democratization of "soviet power" is now, perhaps, more difficult than it was during the late 1980s, despite the positive presence of contested elections and the privatization of property. Ironically, international donor assistance has unintentionally exacerbated this problem by focusing technical efforts primarily on executive branch ministries, only recently re-examining its work in areas of municipal governance, legislative authority, judicial independence, and the absence of effective oversight mechanisms.

The Primary Obstacles To a Stronger Legislative Branch

Legislative Incoherence. While the Team arrived in Ukraine thinking that the task of legislative initiative might well be over, it was surprised to hear from virtually every person that legislative drafting, amending and ratification remained goals that had not yet been achieved. Specifically, as former Justice Minister Holovaty pointed out, there does not exist a single, organized systemic procedure for legislative drafting in the Rada. A confusing matrix of legislative departments, together with the Legal Committee itself, combined with earlier directives granting the Ministry of Justice this function, have all combined to create tremendous legislative confusion at a time when the tasks before every institution which constitutionally possesses the right of legislative initiative (the Rada, individual deputies, the Cabinet of Ministers, the President and the National Bank) is of paramount importance. Work is scattered not only across committees by those who remain technically unproficient with legal matters, but across institutes and departments attached to the Secretariat, who apparently do not communicate well with one another, or understand exactly their own purpose. It was extremely difficult for the Team to ascertain precisely what these various departments actually do.

The Need for Greater Accountability to the Public and to the "Third Sector." While many deputies ostensibly understand the importance of constituency relations, most Ukrainian NGOs remain starkly unaware (and uninterested) in lobbying parliament regarding pending legislation, internal procedures, or any of the other things normally associated with democratic development. The Team encouraged Eurasia's NGO Public Awareness Program to take on added responsibilities of working directly with Ukraine's emerging NGO community to increase communication with, and pressure on, the Rada. While this is a long-term developmental issue, no real democratization can effectively take root without the critical evolution of a strong civil society. Again, this issue needs to be stressed to the Rada, as well as to the NGO community. This will become even more important given changes in the electoral law which ostensibly encourage party formation and coalition-building.

Inadequate Rules Governing Behavior. Currently, the Rules Committee is reviewing several drafts (compiled with assistance from U.S. Congressional and European parliamentary materials) on establishing laws regulating behavior and ethics of deputies themselves. Such changes are critically needed in order to give the Ukrainian electorate confidence that deputies actually represent anyone other than their own immediate financial interests. Specifically, there is no oversight body within the Rada with the power to demand financial and decision-making accountability from the Secretariat or the leadership itself. The need for this is great, when contrasted against the realities of the current parliamentary elections. One source informed the Team that out of the 6,500 persons running for single-member constituencies, approximately 2,000 of them have "known criminal connections." The prospect of a Secretariat immune from any accountability to its own membership, and Parliament as a whole being composed of many members who are running only to acquire immunity from prosecution, rather than to serve their country, do not represent encouraging circumstances for a young democracy, struggling to overcome a legacy of legislative weakness and inexperience.

Need for Greater Information Dissemination. Regardless of behavior by other branches of power, the Rada Secretariat has failed previously to understand the importance of staff support, information collection, research and dissemination. During the initial CRS start-up in 1993, the Secretariat tried (but failed) to win CRS approval for the installation of several hundred stand-alone PCs, unconnected to a larger network of servers----a reminder that information-sharing and transparency of behavior remain elusive goals. It is worth noting that the personnel in charge of the computerized systems department in particular are still present.

Dissemination of Parliamentary Materials. Parliamentary materials are currently scattered across several institutions, including the Vernadsky Library, the Parliamentary (National) Library, and the Library and Analytical Departments within the Secretariat. Information is thus dispersed

among several competing departments which do not appear to regularly network with each other or share information readily. While the Parliamentary Library's existing database of bibliographic references is available to the general public, those interviewed did not believe that this information was widely known to NGOs, those who might have greatest use for it, outside the parliamentary staff. The Mission should work closely with the new liaison, Viktor Kytasty, to determine where best to store all these materials.

Unfamiliarity with Western Parliamentary Procedures. One of the strongest ways this manifests is the Rada's failure thus far to institutionalize procedures for open committee hearings or regular testimony and commentary by government officials and outside experts. While some committee chairmen (most notably Ryabchenko of the Privatization Committee) expressed their convictions that such a system must be implemented in the Rada, most are either totally unfamiliar with the practice, or highly dubious as to its value. Such a procedure is particularly important with regard to the budget, and the Rada must begin to open this process more to public scrutiny. Some deputies stated that they would be more amenable to the process of open hearings if an organized process for carrying them out were instituted by the Secretariat.

Weak Analytical Capabilities. Finally, in the field of analytical research, staff support and training, the Rada remains disadvantaged vis-a-vis the executive. While the Rada's Committee on Privatization has currently only six professional staff (with even fewer attached to the Budget Committee), the President's Commission on Privatization under Lanovyy has many times more employees in the ministerial apparatus at his disposal. Such numbers, while not conclusive, are indicative of the role played by professional and technical staff in the Rada. Without an increase in its own analytical capability, Parliament remains completely dependent on the Government and the President for information, without effective ways of generating this information on its own.

Failure to Delineate Legislative-Judicial Responsibilities. The inability to organize legislative work more systematically has two overall detrimental effects: (a) *it prevents the Rada from doing little more than providing commentary* (often without expertise) on legislation initiated by others, most notably the Cabinet of Ministers; and (b) *it puts the newly-created Constitutional Court at institutional loggerheads with an institution which frequently ratifies incoherent or unconstitutional legislation.* Expanding the influence of both institutions in the face of a much stronger executive is therefore undermined.³

Executive-Legislative Deadlock: Cause or Effect? The popular image of the Ukrainian Legislature as little more than an unreconstructed "anti-reformist" body obscures much more than it clarifies. While the Rada all too often has behaved in ways that failed to reflect professionalism or technical expertise, all those interviewed (including journalists, and some outside NGOs) point out that the Rada has not remained static since 1992, and has quietly been working to improve its own internal procedures. Some, even those close to the Cabinet of Ministers, pointed out that the executive branch is often even more guilty of less-than-professional behavior, failing to differentiate between the official disapproval of leftist ideology and the institution of the legislature as a whole. At times both the Cabinet and the President have failed to articulate support for legislation before the Rada, ignoring their constitutional directives to seek advice and consent. The Cabinet of Ministers under Mr. Pustovoitenko has recently made overtures to Parliament to try to address this, but with little effect. Many deputies believe these words to be insincere at best, claiming, as did one important deputy, that "the

³Some interviewed pointed out that there is a certain advantage to legislative "incoherence" since many bodies theoretically have the right to influence new laws in an environment where few are certain what administrative or legal changes should be made. Yet on the whole, a legislative institution is weakened, not strengthened, by such a situation.

president prefers to fish in muddy waters" anyway. *What can accurately be stated is that levels of policy incoherence, deliberate obfuscation and lack of professionalism remains at sufficiently high levels throughout the entire Ukrainian Government that all branches of power have contributed greatly to the current impasse.*⁴ The President, for example, frequently fails to communicate his own policies or programs coherently, which only adds to the Legislature's frustration. Under such conditions, as the Director of the Center for Policy Studies, Slava Pikhovchek, remarked, "whatever its politics, the new Rada will be more impatient, not less" with the executive branch when the new Convocation sits in April.

⁴To wit, the recent Law on the Formation of the Cabinet of Ministers was finally adopted by the Rada, but the President refused to sign it, even after three successive attempts. Such deliberate refusals to participate in a constitutional process on the President's part have only added to the impasse, not removed it.

Next Steps: Donor Training and Interaction with the Secretariat

A Need for Structural Reforms, Not Additional Hardware. The Rada Secretariat, interviewed for this Assessment, has been quite specific about what it does (and does not) want from foreign technical assistance. Unfortunately, the Secretariat is interested primarily in the organization of purely technical information capabilities in goals laid out pointedly before the Team by Deputy Chairman Sharaev. They include, (a) the establishment of a genuine analytical service; (b) the strengthening of existing databases; and (c) the expansion of electronic information capability (this probably means more PCs and hardware). While these goals are understandable, the Team told Deputy Chairman Sharaev that compromise would have to be the order of the day, since the USG did not have the legal authorization to start the CRS program again. More than that, supporting the Rada through more PCs simply does not represent much 'bang for the buck.' Other areas, such as staff training and organizational reforms, provide greater chances for Ukraine's new democracy to strengthen.

A Lack of Understanding of the Functions of a Modern Legislature. The Secretariat's lack of internal reform is connected to the current gridlock between executive-legislative branches, which may be aptly characterized as a failure to distinguish between oversight and veto functions afforded different branches of power. While the Rada has tried to stop the President (and vice-versa), neither one has progressed to a system of predictable procedures for engaging in the regular business of oversight. Logically, the primary goal of foreign assistance to the Rada should be to help it pursue this goal in more systematic fashion. In order to do this, the Team believes that including the Secretariat in this process is indispensable, however difficult that may be. Once the new convocation is in place, USAID/Kiev is urged to hold a meeting with Speaker Moroz (or his successor) after the new convocation to present three proposals:

(a) *The World Bank New Member Training Symposium* (details of which will be worked out by the Donor Committee in March-April). This might well be piggy-backed on a new proposal by the European Union to bring parliamentary staff to the EU Parliament in Strasbourg as well as national European parliaments for additional training.

(b) *A Structural Reform Plan Within the Rada*, to include (i) *a single repository for parliamentary and donor-supplied technical expertise*; (ii) *a single, organized process for legislative drafting*; and (iii) *the adoption of greater rules governing parliamentary ethics, behavior and accountability*, as discussed throughout this Report (many of which are already before the Rada's Ethics Committee). This list might well include stronger leadership on pursuing conflict of interest legislation, rules governing financial transparency (including that of the Secretariat), and procedures detailing penalties for abuse of rules and abuse of parliamentary immunity, including censure and expulsion, as well as creation of an Oversight Committee (similar to our congressional Ways and Means) which would have the power to supercede decisions of the Secretariat itself.

Such an approach is warranted given the years of technical assistance already rendered to Parliament's individual members and committees by providing legal expertise. Furthermore, as Deputy Sheiko, Chairman of the Rules Committee, pointed out to the Team, unless the Rada begins to incorporate some of these internal reforms, the even stronger possible leftist orientation of the deputies may well give the President greater opportunities to exercise the option of parliamentary dismissal---a critical mistake for a fledgling new democracy. Such reforms would not only help the Rada's goal of providing an assembly where legislation initiated by the Cabinet of Ministers is amended, but would increase its authority to the point where it could shoulder more responsibilities that would come from increased legislative drafting.

APPENDIX A

(List of Interviews)

US Government

Gregory Huger, Director, USAID/Kiev
Robert Patterson, Political Counselor, US Embassy
Marcus Micheli, Second Secretary, US Embassy
Elinor Bachrach, USAID/Kiev/OER
David Black, USAID/Kiev/DST
Maria Dotsenko, USAID/Kiev/DST
Judy Hansen, USAID/Kiev/DST
Yaropolk Kulchycky, USAID/Kiev/DST
James Neeley, USAID/Kiev/OER

USAID Grantees

William Robinson, CRS (Washington)
Michael Conway, IFES (Washington)
Nick Deychakiwsky, Eurasia Foundation
Cliff Downen, FMOC
Thomas E. Garrett, Country Director, IRI
Jay Gertsema, Program Officer, NDI
Nicole King, NDI
Natalie Melnyczuk, Project Manager, PDP
Frances Miko, CRS
Petro Matiaszek, Deputy Director, ARD/Checchi
Viktor Karpenko, Counterpart
Juliana Pilon, IFES (Washington)
Bohdan Radejko, Chief of Party, RTI
Valentyna Telychenko, Deputy Director, PDP
Donna Usher, Project Manager, PADCO
Mark Wallen, NDI

Other Donors

Emile Baran, Canadian Embassy
Filip Cornelis, European Union, Economic/Political Counselor
Charel Krol, TACIS/Policy and Legal Advice Centre
Larisa Leshchenko, Economist, World Bank
Olga Sandokova, Officer, British Know-How Fund
Kilian Strauss, European Union Economic Affairs Officer

Ukrainian and Other NGOs

Galina Freeland, Ukrainian Legal Foundation
Hertzfeld and Heilbronn, Salans
Serhiy Holovatiy, Ukrainian Legal Foundation
Paulo Kachur Deputy Director, Association of Cities
Yevhen Lapin, "F4 laboratory"
Slavko Pikhovchik, Center for Independent Political Research
Myroslav Pitsyk, Executive Director, Association of Cities

Victoria Shvedova, Parliamentary Correspondent, Interfax
Vyacheslav Yakubenko, Parliamentary Correspondent "Den"

The Verkhovna Rada

Anatoliy Brovkyn, Deputy General Director, Vernadsky Library
Ivan Bilas, Deputy Chairman, Anti-Corruption Committee
Yuriy Buzdugan, Chairman, Committee on Labor & Social Policy
Vyacheslav Chornovil, Parliamentary Head, "Rukh"
Victor Kytasty, Reference Unit
Victor Mandebura, Head of Research & Information Department
Hryhoriy Omelchenko, Chairman, Anti-Corruption Committee
Alla Pohorelova, Department for Committee Relations
_____ Pustovoitovsky,
Nosov, Valdislav, Member Liaison for Foreign Assistance
Oleksandr Ryabchenko, Chairman, Committee on Privatization
Oleksiy Semenovych, Director, Vernadsky Library
Anatoliy Selivanov, Director Institute for Legal Relations
Vyacheslav Sokerchak, Chairman, Committee on Financing and Banking
Leonid Sharayev, First Deputy Chairman of the Secretariat
Mykola Shvets, Head of Information Systems Center
_____ Stretovich, Chairman, Committee on Legal Systems
Mykola Yarosh, Chairman, Department of Committees
Ivan Zaets, Member, Committee on Foreign Relations
Yevhen Zhovtiak, Deputy, District No. 94

Former Members of the Rada

Yakiv Zaiko, Solicitor, Parliamentary Development Project
Member, 12th Convocation
Pavlo Kykliy, Director, Parliamentary Development Project
Member, 12th Convocation
Leonid Biliy, Member, 12th Convocation
Ivana Klympush, Member, 12th Convocation

Municipal Radas

Petro Svitlichniy, Chairman, Executive Committee, Kiev Municipal Rada
Heorhii Veremichyk, Committee on Property, Kiev Municipal Rada
Oleksandr Zaets, Press-Secretary, Kiev City Council

The Executive Branch

Roman Bezsmertny, Presidential Representative to the Rada
Anatoliy Kornienko, Director, National Parliamentary Library (Ministry of Culture)

The Cabinet of Ministers

Danylo Bilak, Counsel to the Vice-Prime Minister for Economic Affairs